

United States Court of Appeals for the Armed Forces
Washington, DC 20442-0001

In re)	
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CHANGE OF RULES)	<u>O</u> <u>R</u> <u>D</u> <u>E</u> <u>R</u>
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)	

Upon careful consideration of certain proposed changes to the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, which were presented to and reviewed by the Rules Advisory Committee of the United States Court of Appeals for the Armed Forces and thereafter published in the Federal Register for comment, it is, by the Court this 22nd day of October, 2001,

ORDERED:

That effective November 1, 2001, Rules 13(c), 20(b) and (c), 21(b), 24 and 41(a) are amended as provided in the Attachment to this order.

For the Court,

/s/William A. DeCicco
Clerk of the Court

Attachment

PROMULGATION OF CHANGES TO RULES 13(c), 20(b) AND (c),
21(b), 24, AND 41(a):

REVISION TO RULE 13(c)

ATTORNEYS

RULE 13. QUALIFICATIONS TO PRACTICE

- (a) [Same]
- (b) [Same]
- (c) Each applicant shall file with the Clerk an application for admission on the form prescribed by the Court, together with an application fee in an amount prescribed by Court order and a certificate from the presiding judge, clerk, or other appropriate officer of a court specified in (b) above, . . .
- (d) [Same]

REVISION TO RULE 20(b) and (c)

RULE 20. FORM OF PETITION FOR GRANT OF REVIEW

* * * * *

(b) **Form to be used by an appellant's counsel.** A petition for grant of review under Rule 18(a)(1) filed by counsel on behalf of an appellant will be substantially in the following form:

* * * * *

(Signature of counsel)

(Typed name of counsel)

(Address of counsel)

(Telephone no. of counsel)

(E-mail address, if any)

*(Date and manner of filing -
see Rules 36 and 39))*

* * * * *

(c) An appellant or counsel on behalf of an appellant shall file a petition for grant of review in the manner and within the time limits set forth in Rule 19(a). ***Upon receipt, the Clerk shall stamp the petition indicating the date it was received and, if filed by mail under Rule 36(c), shall retain the envelope showing the postmark thereon.***

REVISION TO RULE 21(b)

RULE 21. SUPPLEMENT TO PETITION FOR GRANT OF REVIEW

(a) Review on petition for grant of review requires a showing of good cause. Good cause must be shown by the appellant in the supplement to the petition, which shall state with particularity the error(s) claimed to be materially prejudicial to the substantial rights of the appellant. See Article 59(a), UCMJ, 10 USC § 859(a).

(b) The supplement to the petition shall be filed in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or (B), shall include an Appendix required by Rule 24(a), shall conform to the provisions of Rules 24(b), 35A, and 37, and shall contain:

(1) A statement of the errors assigned for review by the Court;

(2) A statement of statutory jurisdiction, including:

(A) the statutory basis of the Court of Criminal Appeals jurisdiction;

(B) the statutory basis upon which this Court's jurisdiction is invoked;

(3) A statement of the case setting forth a concise chronology, including **all relevant dates**. The chronology shall specify: (A) the results of the trial; (B) the actions of the intermediate reviewing authorities and the Court of Criminal Appeals; (C) **the disposition of a petition for reconsideration or rehearing, if filed**; and (D) any other pertinent information regarding the proceedings, **[including, if set forth in the record, the date when service upon the accused of the decision of the Court of Criminal Appeals was effected.]**;

(4) A statement of facts of the case material to the errors assigned, including specific page references to each relevant portion of the record of trial;

(5) A direct and concise argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant. Where applicable, the supplement to the petition shall also indicate whether the court below has:

(A) decided a question of law which has not been, but should be, settled by this Court;

(B) decided a question of law in a way in conflict with applicable decisions of (i) this Court, (ii) the Supreme Court of the United States, (iii) another Court of Criminal Appeals, or (iv) another panel of the same Court of Criminal Appeals;

(C) adopted a rule of law materially different from that generally recognized in the trial of criminal cases in the United States district courts;

(D) decided the validity of a provision of the UCMJ or other act of Congress, the Manual for Courts-Martial, a service regulation, a rule of court or a custom of the service the validity of which was directly drawn into question in that court;

(E) decided the case (i) en banc or (ii) by divided vote;

(F) so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a court-martial or other person acting under the authority of the UCMJ, as to call for an exercise of this Court's power of supervision; or

(G) taken inadequate corrective action after remand by the Court subsequent to grant of an earlier petition in the same case and that appellant wishes to seek review from the Supreme Court of the United States; and

(6) A certificate of filing and service in accordance with Rule 39(e).

(c)(1) Answer/reply in Article 62, UCMJ, appeals. An appellee's answer to the supplement to the petition for grant of review in an Article 62, UCMJ, 10 USC § 862 (1983), case shall be filed no later than 10 days after the filing of such supplement. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer.

(2) Answer/reply in other appeals. An appellee's answer to the supplement to the petition for grant of review in all other appeal cases may be filed no later than 30 days after the filing of such supplement, see Rule 21(e); as a discretionary alternative in the event a formal answer is deemed unwarranted, an appellee may file with the Clerk of the Court a short letter, within 10 days after the filing of the appellant's supplement to the petition under Rule 21, setting forth one of the following alternative positions: (i) that the United States submits a general

opposition to the assigned error(s) of law and relies on its brief filed with the Court of Criminal Appeals; or (ii) that the United States does not oppose the granting of the petition (for some specific reason, such as an error involving an unsettled area of the law). A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

(d) The Court may, in its discretion, examine the record in any case for the purpose of determining whether there appears to be plain error not assigned by the appellant. The Court may then specify and grant review of any such errors as well as any assigned errors which merit review.

(e) Where no specific errors are assigned in the supplement to the petition, the Court will proceed to review the petition without awaiting an answer thereto. See Rule 19(a)(5).

(f) An appellant or counsel for an appellant may move to withdraw his petition at any time. See Rule 30. [Amended October 1, 1987; amended July 16, 1990, effective August 15, 1990; amended October 12, 1994; amended January 20, 1999, effective February 1, 1999.]

REVISION TO RULE 24

RULE 24. FORM, CONTENT, AND PAGE LIMITATIONS

(a) **Form and content.** All briefs shall conform to the printing, copying, and style requirements of Rule 37, shall be legible, and shall be substantially as follows:

IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES,)	
(Appellee))	
(Appellant))	BRIEF ON BEHALF
(Respondent))	OF (APPELLANT,
v.)	APPELLEE, ETC.)
)	
(Full typed name, rank,)	Crim.App. Dkt. No. _____
& service of accused))	

(Service no. ____),) USCA Dkt. No. _____
 (Appellant))
 (Appellee))
 (Petitioner))

Index of Brief

[See Rule 37(c)(1)]

Table of Cases, Statutes, and Other Authorities

Issue(s) Presented

[Set forth, in a concise statement, each issue granted review by the Court, raised in the certificate for review or mandatory review case, or presented in the petition for extraordinary relief, writ-appeal petition, or petition for new trial. Issues presented will be set forth in upper case letters.]

Statement of Statutory Jurisdiction

[Set forth the statutory basis of the Court of Criminal Appeals jurisdiction and the statutory basis for this Court's jurisdiction.]

Statement of the Case

[Set forth a concise chronology, including **all relevant dates, to include:** (A) the results of the accused's trial; (B) actions of the intermediate reviewing authorities by the convening authority and the Court of Criminal Appeals; and as well as any other pertinent information regarding the proceedings, including, where applicable, the date the petition for review was granted.] (C) the disposition of a petition for reconsideration or rehearing, if filed; and (D) any other pertinent information regarding the proceedings, including, where applicable, the date the petition for review was granted.]

Statement of Facts

[Set forth a concise statement of the facts of the case material to the issue or issues presented, including specific page references to each relevant portion of the record of trial. Answers may adopt the appellant's or petitioner's statement of facts if there is no dispute, may state additional facts, or, if there is a dispute, may

restate the facts as they appear from the appellee's or respondent's viewpoint. The repetition of uncontroverted matters is not desired.]

Summary of Argument

[Each brief and answer shall contain a summary of argument, suitably paragraphed to correspond to each issue presented. The summary should be a succinct but accurate and clear condensation of the arguments made in the body of the brief.]

Argument

[Discuss briefly the point of law presented, citing and quoting such authorities as are deemed pertinent. The argument must also include for each issue presented a statement of the applicable standard of review. The standard of review may appear in the discussion of each issue or under a separate heading.]

Conclusion

[State the relief sought as to each issue presented, for example, reversal of the Court of Criminal Appeals decision and dismissal of the charges, grant of a new trial, the extraordinary relief sought, etc. No particular form of language is required, so long as the brief concludes with a clear prayer for specific Court action.]

Appendix

[The brief of the appellant or petitioner shall include an appendix containing a copy of the Court of Criminal Appeals decision, unpublished opinions cited in the brief, and relevant extracts of rules and regulations. The appellee or respondent shall similarly file an appendix containing a copy of any additional unpublished opinions and relevant extracts of rules and regulations cited in the answer.]

(Signature of counsel)

(Typed name of counsel)

(Address of counsel)

(Telephone no. of counsel)

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [mailed]
[delivered] to the Court and [mailed] [delivered] to (enter
name of each counsel of record) on _____.
(date)

(Typed name and signature)

(Address and telephone no.)

(b) Page limitations. Unless otherwise authorized by
order of the Court or by motion of a party granted by the
Court (see Rule 30), the page limitations for briefs filed
with the Court, not including appendices, shall be as
follows:

(1) Briefs of the appellants/petitioners shall not
exceed 50 pages;

(2) Answers of the appellees/respondents shall not
exceed 50 pages;

(3) Replies of the appellants/petitioners shall not
exceed 15 pages.

REVISION TO RULE 41(a)

**RULE 41. PHOTOGRAPHING, TELEVISIONING, RECORDING, OR
BROADCASTING OF HEARINGS**

(a) The photographing, televising, **recording**, or
broadcasting of any session of the Court or other activity
relating thereto is prohibited within the confines of the
courthouse unless authorized by the Court.

(b) Any violation of this rule will be deemed a contempt of this Court and, after due notice and hearing, may be punished accordingly. See 18 USC § 401.